IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.394 OF 2004

Kunjbihari B. Agarwal,
Age Adult, Occ: Business,
R/o A/4 Dimple Apartment,
Jerbai Wadia Road,
Parel, Mumbai-400 012. .... Petitioner

- Versus -

1. The State of Maharashtra
(through Sr.P.I., RAK Marg
Police Station vide CR
No.232/03).

2. G.B.C.B.C.I.D.,
(through Sr.P.I., Unit-IV,
Mumbai.

3. Central Bureau of Investigation,
Tanna House, Near MLA Hostel,
Mumbai.

4. Sanjeev Kamble,
Age: Adult, Occ: API,
Add: Property Cell,
Police Headquarters,
Crawford Market,
Mumbai. .... Respondents

Shri Rohit Pawaskar, Advocate, for the
Petitioner.

Shri S.R. Borulkar, Public Prosecutor,
for the Respondent No.1.

None present for the other Respondents.

CORAM: R.M.S. KHANDEPARKAR &
A.A. SAYED, JJ.

DATED: NOVEMBER 19, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard the learned Advocate for the petitioner and

the learned Public Prosecutor. By the present petition the petitioner is seeking direction in the nature of writ of mandamus for thorough investigation in relation to C.R. No.232/03 which was lodged at the R.A.K. Marg Police Station, Mumbai, including the alleged involvement and/or the role played by Shri Sanjeev Kamble and Shri Amit Shah in the incident of alleged kidnapping of the petitioner's child.

2. When the matter came up for hearing, after having noted the facts of the case and the grounds on which the relief is sought for in the matter, the learned Public Prosecutor stated that consequent to conclusion of the investigation, charge-sheet was filed and the trial has almost come to its concluding stage, in the sense that the testimony of all the witnesses has been recorded and only the investigation officer remains to be examined.

3. Considering the nature of the grievance made in the petition and it being only related to the alleged lapse on the part of the investigation machinery in carrying out investigation pursuant to C.R. No.232/03 and the fact that on conclusion of the investigation already charge-sheet has been filed as well as even the recording of the evidence has been done and it is in the final stages, in our considered opinion, no purpose will be served in dealing with this matter in writ

proceedings. Since the trial Court is already seized with the matter and the petitioner being one of the witnesses in the proceedings before the trial Court, nothing prevents the petitioner from bringing to the notice of the trial Court his grievance and lapses, if any, on the part of the investigation agency in the matter of investigation in relation to C.R. No.232/03 which was registered at the R.A.K. Marg Police Station and thereupon to seek necessary relief, if any, in terms of Section 173(8) of the Code of Criminal Procedure from the trial Court. In our considered opinion, it would be a fit case, therefore, to dismiss this petition, leaving all the issues open including the remedy under Section 173(8) of the Cr.P.C. to the petitioner.

4. It is also sought to be argued on behalf of the petitioner that the police have failed to investigate into the matter of the alleged role and involvement of Shri Sanjeev Kamble and Shri Amit Shah in the entire episode of kidnapping of the child. Needless to say that the said issue can also be dealt with by the trial Court in case appropriate material in that regard is placed before the trial Court and/or appropriate application in that regard is made and the trial Court is sought to be convinced by the petitioner for necessary order in that regard under the provisions of law. It would be too premature to make any comment

either regarding the alleged lapse on the part of the investigation agency in that regard or regarding the alleged involvement of the said Kamble and Shah in the matter. It would be appropriate to leave all these issues open while dismissing the petition and leaving it to the petitioner to take appropriate steps, if so advised, in the matter before the trial Court.

5. For the reasons stated above, therefore, without expressing any opinion on the merits of the case and leaving all the issues open in the matter including the remedy under Section 173(8) of the Cr.P.C. to the petitioner, the petition is hereby dismissed. The rule is discharged with no order as to costs.

(A.A. Sayed, J.) (R.M.S.Khandeparkar, J.)

sjs/N7cwpj394.4